



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

Matter of: T.J. O'Brien Company, Inc.  
File: B-227399  
Date: September 17, 1987

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### DIGEST

1. Bid for fire safety inspection services which bidder qualified with regard to inspection schedule with the notation "4 visits" was properly rejected as nonresponsive since invitation for bids (IFB) required that inspection schedule be in accordance with applicable regulations and codes which require that certain fire safety equipment included in the IFB be inspected more frequently than four times over the term of the contract.
2. Protest challenging responsiveness of second and third low bids is dismissed as untimely where protester learned of its bases of protest more than a month before it raised the arguments.

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### DECISION

T.J. O'Brien Company, Inc. protests the rejection of its bid under invitation for bids (IFB) No. 0018-91H2-87, for fire safety equipment inspection services at the Agricultural Research Service's Western Regional Research Center in Albany, California. The agency rejected O'Brien's bid as nonresponsive because the protester had added a notation to its bid that, in the agency's view, qualified O'Brien's obligation to perform inspections, contrary to the terms of the IFB. We deny the protest in part and dismiss it in part.

The IFB divided the equipment to be inspected into three groups (line items 1-3). Item 1 included all fire extinguishers, all smoke detectors, all heat sensitive detectors, the fire alarm system, the sprinkler system, the fire standpipe system, and all fire hoses and assemblies.

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The IFB provided that work was to be performed in accordance with all applicable local, state, and federal regulations, and required that within 10 working days after contract award the successful bidder submit an inspection schedule for each type of equipment, indicating which regulations or codes were applicable.

O'Brien's bid was the lowest of the three opened on April 30, 1987. On its bid schedule, next to its price for item 1, O'Brien had written "4 visits." The contracting officer concluded that this made the bid nonresponsive and rejected it.

O'Brien argues that its bid was improperly rejected and that it should have received the award as the low bidder. The protester maintains that the "4 visits" notation did not make its bid nonresponsive because it was consistent with the applicable standard for inspection of sprinkler systems, which calls for inspection on a quarterly basis. We find this argument to be without merit.

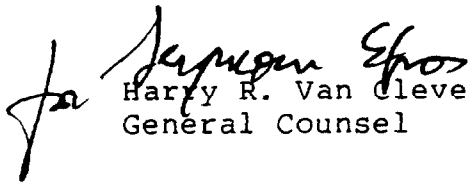
To be responsive, a bid as submitted must unequivocally offer to provide the requested items or services in total conformance with the material terms of the IFB. Wilmington Shipyard, Inc., B-214467, June 27, 1984, 84-1 CPD ¶ 677. A bid that limits a bidder's contractual obligation to other than the obligation reflected in the IFB's material terms generally must be rejected. International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD ¶ 652. Here, O'Brien argues that its bid properly provides that the sprinkler system is to be inspected quarterly, as required by the applicable National Fire Protection Association (NFPA) standard. The materials O'Brien submitted with its protest, however, show that while some parts of the sprinkler system require quarterly inspections under the NFPA standard, other parts require more frequent inspections. In addition, O'Brien does not show that the other types of equipment included under line item 1 of the IFB require only quarterly inspections.

Since the notation on its bid limited the number of inspections O'Brien agreed to provide for the equipment under line item 1 without regard to whether more frequent inspections were required by the terms of the IFB, the agency reasonably determined that the notation improperly qualified O'Brien's bid. As a result, since the inspection schedule requirement clearly is a material term of the IFB, O'Brien's bid properly was rejected as nonresponsive. International Waste Industries, B-210500.2, supra. In view of our conclusion that the notation on O'Brien's bid made the bid nonresponsive, it is irrelevant whether, as the

protester argues, the invitation requested information relative to the inspection schedule to be submitted with the bids.

In its comments on the agency report, O'Brien for the first time challenges the responsiveness of the other two bids. We will not consider O'Brien's arguments since they are untimely. Our Bid Protest Regulations require that protests such as this one be filed not later than 10 working days after the basis of protest is or should have been known. 4 C.F.R. § 21.2(a)(2) (1987). The protester learned of these bases of protest on June 16, or shortly thereafter, when it received portions of the other two bids in response to its Freedom of Information Act request. It did not raise these arguments, however, until more than a month later when it filed its comments on the agency report on July 22. Accordingly, we dismiss these grounds of protest as untimely.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel